

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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JUN 21 1995

In the Matter of)
)
Amendment of Section 2.106 of the) ET Docket No. 95-18
Commission's Rules to Allocate)
Spectrum at 2 GHz for Use) RM-7927
by the Mobile-Satellite Service)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

To: The Commission

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REPLY COMMENTS OF UTC

UTC^{1/} hereby submits its reply comments in the above-referenced proceeding concerning the introduction of mobile-satellite service (MSS) in the 1990-2025 MHz and 2165-2200 MHz (upper 2 GHz) bands. UTC supports the Federal Communications Commission's (FCC) proposal, as evidenced in its January 31, 1995 Notice of Proposed Rulemaking (NPRM), to apply the previously-adopted transition rules for the 2 GHz band to the introduction of MSS.

In its comments, UTC noted that many of its members -- electric, gas and water utilities and natural gas pipelines -- operate microwave systems in the bands affected by the proposed introduction of 2 GHz MSS. UTC supported the imposition of the transition rules that were adopted in ET Docket No. 92-9 for the introduction of emerging technology services in the 1850-2200 MHz band.

^{1/} UTC, The Telecommunications Association, was formerly known as the Utilities Telecommunications Council.

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List A B C D E

I. The Majority of Commenters Favor the Imposition of the Existing Transition Rules

The majority of commenters expressing an opinion on the transition rules proposed in the NPRM agree that the existing transition rules are appropriate for 2 GHz MSS. Motorola, Inc., Iridium, Inc., TRW, Inc., Celsat America, Inc., the Association of Federal Communications Consulting Engineers (AFCCE), the Association of Public-Safety Officials-International, Inc. (APCO), the Association of American Railroads (AAR), the American Petroleum Institute (API) and BellSouth² all agree that the general transition framework established in ET Docket No. 92-9 should apply to the introduction of MSS. This framework includes the payment of relocation costs by those benefiting from the relocation, the relocation of incumbent microwave systems to "comparable facilities" and an opportunity for negotiations between the parties to establish an equitable resolution of relocation issues.

The framework ensures that the vital communications being carried on the 2 GHz systems by utilities, pipelines, public safety entities and railroads will not be disrupted by the transition out of the upper 2 GHz band. As UTC noted in its comments, 2 GHz microwave systems

²/ BellSouth's comments were filed on behalf of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Personal Communications, Inc.

operated by utilities and pipelines serve vital functions which cannot be disrupted without jeopardizing public safety.³ The relocation from the upper 2 GHz band must therefore ensure a seamless transition to facilities which are equivalent or better than the 2 GHz microwave facilities.

UTC supports the adoption of specific time periods for mandatory and voluntary negotiations between the parties. UTC joins AAR, API, AFCCE and BellSouth in requesting that the Commission apply the same negotiation time periods that have been established for negotiations with 2 GHz PCS licensees -- two years for voluntary negotiations and one year for mandatory negotiations -- to 2 GHz MSS licensees.⁴ As noted by UTC and AAR, the transition rules were designed to protect the vital microwave operations in the 2 GHz band from disruption and to minimize the economic impact on these licensees.⁵ The same objectives are present in this case and the same transition rules should apply. Furthermore, the establishment of both voluntary and

³/ UTC comments at p. 3.

⁴/ AAR comments at p. 4; API comments at p. 14; AFCCE comments at p. 3; BellSouth comments at pp. 3-4.

⁵/ UTC comments at p. 2; AAR comments at p. 5.

mandatory negotiation periods will permit the parties to resolve the issues without requiring Commission or judicial intervention.⁶

UTC strongly agrees with API that the Commission should not eliminate primary status for microwave incumbents until a displaced incumbent has spent one year operating at the comparable relocation facilities.⁷ The Commission's proposal to re-designate the incumbent systems as secondary after an MSS licensee requests involuntary relocation would subject incumbent systems to interference while the details of their relocation agreements are being established. Furthermore, designating microwave systems as secondary at this point would eviscerate the only adequate remedy an incumbent has against relocation to inadequate replacement facilities -- returning to the original 2 GHz facilities.⁸

II. The Relocation Costs Must be Borne by Those Who Benefit from the Clearing of the 2 GHz Band

⁶/ There is sufficient time to implement voluntary and mandatory negotiation periods. As Loral/QUALCOMM Partnership, L.P. (QUALCOMM) points out in its comments, "[t]he Commission is fortunate in that there is currently an eight to ten year window, during which relocation would occur..." QUALCOMM comments at pp. 19-20.

⁷/ API comments at p. 14.

⁸/ Similarly, QUALCOMM's proposal that all incumbents be designated as secondary at a date certain must also be rejected. QUALCOMM comments at p. 10. As noted previously by the Commission, the microwave systems operating in the 2 GHz band serve "important and essential functions"; interference to these systems could threaten these functions and could jeopardize public safety.

A number of prospective MSS licensees have filed comments on the issue of how to allocate the costs associated with the displacement of the 2 GHz incumbents.⁹ As UTC stated in its comments, the costs of the relocation must be borne by those who benefit from the clearing of the upper 2 GHz band. Just as the PCS licensees are required to pay for the relocation of the incumbents in the 1850-1990 MHz band, the MSS licensees should be required to pay the full costs associated with the relocation of the incumbents in the 1990-2025 MHz, 2110-2145 MHz and 2165-2200 MHz bands.

UTC specifically opposes the proposal by TRW to require PCS licensees to pay a portion of the costs for the relocation of the upper 2 GHz band.¹⁰ It is the MSS licensees and not the PCS licensees who directly benefit from the allocation of spectrum for MSS in the upper 2 GHz band. Moreover, the rules regarding the transition of the lower 2 GHz band are already established and provide that PCS providers must pay for the relocation of microwave licensees with which they would interfere. It is too late to re-evaluate these rules to require additional contributions for the relocation of incumbents in other bands. It would also be inequitable to require those

⁹/ TRW comments at p. 10; Motorola comments at p. 22; Iridium comments at p. 1; Personal Communications Satellite Corp. (PCSC) comments at pp. 9-10; QUALCOMM comments at pp. 17-20.

¹⁰/ TRW comments at p. 7.

entities who have already obtained PCS licenses under the current rules to contribute money for the relocation of the upper 2 GHz band.¹¹

The Commission should ignore the efforts of the prospective MSS licensees to avoid paying relocation costs by arguing that they cannot afford such costs. TRW, for instance, claims that "by seeking to place the full burden of relocating the BAS and FS on MSS licensees, the Commission would render its MSS 2 GHz allocation useless."¹² TRW seems to ignore the fact that, but for the forced relocation of the incumbent users, there would be no spectrum available for the introduction of 2 GHz MSS. It would be grossly inequitable to require incumbents such as utilities and pipelines to "foot the bill" for a relocation that will benefit the commercial MSS providers. By requiring incumbents that are being forced off the spectrum to pay for their own relocation, the Commission in effect would be subsidizing the introduction of MSS. If 2 GHz MSS cannot operate without subsidies from incumbent microwave users, then perhaps it should not be licensed at this time.

¹¹/ UTC is similarly concerned by the proposal of Motorola that non-MSS licensees who would benefit from the relocation of the incumbents pay their share. Motorola comments at p. 22. Motorola does not specify who these non-MSS beneficiaries might be, and it is difficult to see how non-MSS licensees are benefiting from the relocation.

¹²/ TRW comments at p. 10.

On this same issue, PCSC states that "[w]hile the impact on a given individual incumbent user in a market affected by the 2 GHz market may be relatively small, forcing a handful of MSS licensees to absorb the entire cost of the relocation for the whole country results in a massive cost to these entities."¹³ Again, the cry that MSS licensees cannot afford to pay for the relocation does not change the fundamental equitable principle that the costs relating to the relocation of incumbent users be borne by those commercial providers who are benefiting directly from the clearing of the upper 2 GHz band.

As UTC noted in its comments, any costs that a utility microwave incumbent would incur as a result of the licensing of MSS would be passed on to utility ratepayers in the form of higher utility prices. It is more equitable to have these costs passed to the consumers of the MSS services because these consumers can better choose whether to bear the cost or seek alternative suppliers for the service.¹⁴ Furthermore, PCSC seems to ignore that the converse of this statement is also true. While the relocation costs of individual incumbents may not seem significant, the costs to the respective industries operating microwave systems in the 2 GHz band would be substantial.

¹³/ PCSC comments at p. 8.

¹⁴/ UTC comments at p. 3.

UTC strongly urges the Commission to reject PCSC's proposal to limit the payment for relocation costs only to the incremental cost of early retirement of the 2 GHz equipment.¹⁵ The relocation is necessary to ensure that the vital functions performed by the microwave systems in the 2 GHz band are not disrupted by the introduction of MSS. It is solely due to the introduction of MSS, and not the "retirement" of 2 GHz systems, that utilities and pipelines are being required to discontinue 2 GHz operations. It is only fair that the MSS pay the full costs associated with the relocation, including comparable facilities and other costs relating to the planning, engineering and licensing of the relocation facility.

III. Cost Allocation Issues Can Be Resolved

As noted above, several parties have raised questions about the proper method of allocating relocation costs among MSS licensees.¹⁶ These questions concern issues such as how to determine which MSS licensee should pay for a particular relocation and how and whether to require contributions from future or foreign MSS licensees. While these questions are valid, they should in no way affect the basic principle that all relocation costs should be paid by the licensee who

¹⁵/ PCSC comments at p. 10.

¹⁶/ TRW comments at p. 13; PCSC comments at pp. 9-10; QUALCOMM comments at pp. 17-20.

directly benefits from the clearing of the spectrum and not the incumbent licensee. As QUALCOMM notes, the Commission has sufficient time to consider the unique circumstances presented by the introduction of MSS in the 2 GHz band and to develop the most equitable manner in which to apportion costs.¹⁷

IV. Sharing Between MSS and Microwave Is Not Feasible

Several prospective MSS licensees claim that some, if not all, of the incumbents may not be relocated because MSS services can share spectrum with incumbents without causing interference.¹⁸ UTC disagrees with these commenters' assertions that MSS and microwave operations can co-exist, and has serious reservations regarding the applicability of the interference modeling results to real-world systems. For instance, UTC has a number of concerns with the simulation model developed by Comsat to demonstrate that MSS operations would not interfere with incumbent operations. Studies conducted independently at the request of UTC representatives have indicated that MSS could, in fact, interfere with microwave operations. Furthermore, before sharing between MSS and microwave operations could be mandated, interference standards would need to be developed (similar to the development of PCS-to-microwave interference standards by TIA).

¹⁷/ QUALCOMM comments at pp. 19-20.

¹⁸/ Comsat comments at p. 18; QUALCOMM comments at p. 16; CELSAT comments at p. 9.

V. Conclusion


The Commission should apply the existing transition rules to the introduction of MSS in the upper 2 GHz band. The Commission should permit market-based negotiations between the parties to determine the specific relocation terms, and should require the MSS licensees to pay all costs associated with the relocation. Moreover, the Commission should clarify that the same time periods for voluntary and mandatory negotiations apply to MSS. Finally, the Commission should not mandate sharing between microwave incumbents and MSS licensees.

WHEREFORE, THE PREMISES CONSIDERED, UTC requests the Commission to take action in accordance with the views expressed herein.

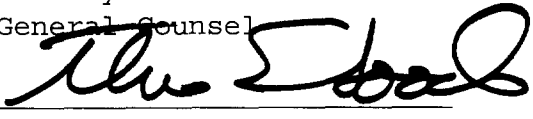
Respectfully submitted,

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June 21, 1995